**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**CRIMINAL APPEAL No. 1275 of 1986**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE ANIL R. DAVE**
**HONOURABLE MR.JUSTICE H.B.ANTANI**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**STATE OF GUJARAT - Appellant(s)**
**Versus**
**JUSAB HUSSEIN SUMRA & ANR - Opponent(s)**

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**Appearance :**
MS HANSA PUNANI, APP for Appellant(s) : 1,
MR US BRAHMBHATT for Opponent(s) : 1, 4,
None for Opponent(s) : 2 - 3,5 - 7.

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**CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE**

**and**

**HONOURABLE MR.JUSTICE H.B.ANTANI**

**Date : 18/10/2007**

**ORAL JUDGMENT**

**(Per : HONOURABLE MR.JUSTICE ANIL R. DAVE)**

1. Being aggrieved by the judgement and order dated 22nd July, 1986, passed in Sessions Case No. 10/1986 by the Sessions Judge, Kutch-Bhuj whereby the respondents-accused have been acquitted, the State of Gujarat has filed this appeal.

2. The facts giving rise the present appeal, in a nut-shell, are as under:

2.1. It was the case of the prosecution that alongwith five other accused, the present respondents-accused had committed offences punishable under the provisions of Sections 354, 323, 147, 148, 149, 336 and 395 of the Indian Penal Code. The charge had been framed below Exh. 5 and the accused pleaded not guilty to the charges levelled against them.

2.2. The case of the prosecution was that when Niru, P.W. No. 1 (Exh.12) was cutting wood near her residence, which was near a railway crossing, accused nos. 1 and 4 approached her with an intention to outrage her modesty. They dragged her to nearby bushes, but as Niru, P.W. No. 1, (Exh. 12) started shouting for help, Mahadev, father-in-law of Niru, P.W. No. 2, (Exh. 13) and Savita, sister-in-law of Niru, P.W. No. 3,(Exh. 14), came to the place and, thereafter, accused no. 1, Jusab Hussain, snatched the axe, which Niru was having, and gave a blow with the axe to Mahadev whereas accused No. 4, Aghada Sidik Katia, who was having a hokey stick, gave a blow with

his hockey to Savita, sister-in-law of Niru. Thereafter, accused nos. 1 and 4 ran away but after some time, with five other persons came to the residence of Mahadev, P.W. No. 2 (Exh. 13) and they pelted stones on the hut of Mahadev. They tried to drag Mahadev, P.W. No. 2 (Exh. 13) out of his hut and started beating Mahadev and Niru with wooden sticks, which were lying in the courtyard. Thereby, they had caused injuries to Niru, Mahadev and Savita. The said accused formed unlawful assembly and they all had caused injuries to Mahadev, Niru and Savita. Thereafter they had also committed robbery.

3. In the course of the trial, the Sessions Court examined the following witnesses:

1. Niru, P.W. No. 1, (Exh. 12)
2. Mahadev Jagshi, P.W. No. 2, (Exh. 13)
3. Savita Mahadev, P.W. No. 3, (Exh. 14)
4. Gulabbhai Chanabhai Bhati, P.S.I, P.W. No. 4, (Exh. 19)
5. Ambalal Kalidas Patel, P.I., P.W. No. 5, (Exh. 21)
6. Gulab Shankarlal, P.W. No. 6, (Exh. 22)
7. Prabhulal Hiralal, P.W. No. 7, (Exh. 24)
8. Pratapsinh Chanduba, P.W. No. 8, (Exh. 30)
9. Jethalal Mulji, P.W. No. 9, (Exh. 32)
10. Mukundrai Kharashanker, P.W. No. 10, (Exh. 33)
11. Vasudevprasad Jayshanker Trivedi, P.W. No. 11, (Exh.34)
12. Dr. Jivram Karshandas Patel, M.O.,P.W. No. 12,(Exh. 38)
13. Manu Bugadomal, P.W. No. 13, (Exh. 44)

14. Jagvirsinh Sugarsingh, P.W. No. 14, (Exh. 45)

4. The Trial Court also considered documentary evidence, which was in the nature of panchnama and injury certificates. After considering the evidence, adduced before the Sessions Court, the Sessions Court came to the conclusion that the charges levelled against the accused had not been proved and, therefore, all the accused have been acquitted.

5. Being aggrieved by the order of acquittal passed by the Sessions Court, the State of Gujarat has filed the present appeal. The appeal has been entertained only so far as accused nos. 1 and 4 are concerned whereas appeal filed against the remaining accused, namely, accused nos. 2, 3, 6 and 7 has been dismissed.

6. The Sessions Court acquitted all the accused, mainly for the reasons stated hereinbelow.

6.1. The Sessions Court found that there were several contradictions in the First Information Report (Exh. 20) and deposition of Niru, P.W. No. 1. The Sessions Court also found that though in the First Information Report (Exh. 20) it was stated that accused nos. 1 and 4 had made an effort to outrage her modesty, in the evidence adduced by her, it was stated that only accused no. 1 had made an attempt to outrage her modesty.

6.2. The Sessions Court also found other

contradictions. Initially, it was stated in the First Information Report (Exh. 20) that when Mahadev, P.W. No. 2 (Exh. 13) had come to the place where an attempt was made to outrage modesty of Niru, Mahadev had persuaded accused nos. 1 and 4 to go away and in pursuance of the said persuasion, both the accused had gone away whereas in the deposition, it was stated by Niru, P.W. No. 1 (Exh. 12) that at that time, accused no. 1 had snatched away the axe, which Niru was having and a blow was given on the head of Mahadev with the axe. It was also stated in the evidence that accused no. 4 had given a hockey blow to Savita, P.W. No. 3(Exh. 14) at that time.

6.3. There also appear to be several contractions with regard to the place where the first offence was committed. The allegation with regard to robbery had not been made in the First Information Report(Exh. 20) filed by Niru, P.W. No. 1(Exh. 12).

6.4. For the aforestated contradictions and other reasons recorded in the judgement, all the accused have been acquitted.

7. Learned APP Ms Hansa Punani has appeared for the prosecution whereas learned advocate Shri U.R. Brahmbhatt has appeared for the respondents accused.

8. It has been submitted by learned APP Ms Hansa Punani that the Sessions Court has not appreciated the evidence adduced before it in a proper manner and has materially erred by acquitting accused nos. 1 and 4.

So as to substantiate her case, she has submitted that the Sessions Court ought to have considered the evidence adduced by Mahadev, P.W. No. 2 (Exh.13), Niru, P.W. No. 1 (Exh. 12) and Savita, P.W. No. 3 (Exh. 14). It has been further submitted by her that the Injury Certificates (Exh. 39C and 40C) clearly reveal that injuries had been inflicted upon Mahadev and Savita. According to her, the said Injury Certificates have been duly proved and even the Medical Officer, namely, Dr. Jivram, P.W. No. 12 (Exh. 38) had also deposed to the effect that the injuries had been inflicted upon Mahadev, Niru and Savita. In view of the said evidence, the Sessions Court ought not to have acquitted the accused.

9. It has been further submitted by the learned APP that the contradictions referred to in the judgement are so minor that the Sessions Court ought to have ignored the said contradictions. It has been submitted by her that there was evidence with regard to the injuries inflicted upon Niru and Savita. Looking to the said fact, atleast the Sessions Court ought not to have acquitted the accused.

10. It has been thus submitted by the learned APP that the Sessions Court has materially erred in acquitting accused nos. 1 and 4.

11. On the other hand, learned advocate Shri Brahmbhatt has vehemently supported the judgement delivered by the Sessions Court.

12. He has taken us through the entire evidence so as to show that the Sessions Court was absolutely justified in acquitting all the accused.

13. The learned advocate has drawn our attention to the First Information Report (Exh. 20). The First Information Report (Exh. 20), reveals that accused nos. 1 and 4 had made an effort to drag Niru, P.W. No. 1 (Exh. 12) to bushes but when she started shouting, her father-in-law, Mahadev, P.W. No. 2 (Exh. 13) had rushed from his hut and even her sister-in-law, Savita, P.W. No. 3,(Exh. 14) had also come to help her. Both had tried to help Niru and, thereupon, accused no. 1 had snatched the axe from Niru, P.W. No. 1,(Exh. 12) and with the axes, a blow had been given on the head of Mahadev, P.W. No. 2,(Exh. 13) whereas P.W. No. 4 had given a hokey blow to Savita, P.W. No. 3, (Exh. 14). As Mahadev, P.W. No. 2, (Exh. 13) was injured, Savita had taken him to the hut and, thereafter, the aforestated two accused had ran towards the railway line and again they had come there with other five persons. All the seven had pelted stones on the hut of Niru and Mahadev. Thereafter, Mahadev had been dragged out from the hut and was beaten with wooden sticks, which were lying in courtyard of the hut. It was stated in the First Information Report (Exh. 20) that as Niru, Savita and Mahadev were afraid of the accused, they all had run away towards the railway crossing and as Mahadev was profusely bleeding, he was taken to the hospital by rickshaw. Thereafter, Niru, P.W. No.1, (Exh. 12) had come to the police station and had filed the First

Information Report (Exh. 20).

14. The aforestated version was the first version given by Niru whereas in the course of her deposition, she has stated that the first incident had taken place near her residence. There is substantial contradiction with regard to the place where the first incident took place. As per the First Information Report (Exh. 20), the incident had taken place quite away from the hut, where Niru was staying. It appears that the incident had taken place near the railway line where there are babul trees because Niru had gone to collect wood for fuel whereas in the deposition she has stated that the first incident had taken place just near her residence.

15. According to the First Information Report (Exh. 20) when accused nos. 1 and 4 had approached Niru, so as to molest her, she started shouting and thereupon Mahadev and Savita had come to her rescue.

16. If one looks at the evidence adduced by Ambalal Kalidas, P.S.I. and Investigating Officer, P.W. No. 5 (Exh. 21), the place where Niru was cutting wood is almost half a kilometer away from her residence. If Niru was cutting wood at the place, which was half a kilometer away from her residence, one cannot believe that upon hearing the screams of Niru, Mahadev and Savita ran to the place where wood was being cut by Niru.

17. It has been also submitted by the learned

advocate that as per the version given in the First Information Report (Exh. 20), Mahadev and Savita were injured by the accused when they had come to help Niru. If one looks at the deposition of Niru, according to Niru, Mahadev as well as Savita had come to help Niru and they had persuaded accused no. 1, Jusab Hussain not to misbehave and thereupon the said accused, the only person who had come to molest her, had gone away. It is also pertinent to note that in the deposition she has stated that only accused no. 1, namely, Jusab Hussain had come to molest her when she was cutting wood near her residence.

18. Thus, there appears to be contradiction with regard to number of persons who had made an effort for outraging her modesty. As per the First Information Report (Exh. 20), accused nos. 1 and 4 both had come, whereas as per the deposition, only accused no. 1 had come.

19. As per the First Information Report (Exh. 20), injuries were inflicted upon Mahadev and Savita at the place where Niru was cutting wood whereas according to the deposition, no injury was inflicted by accused no. 1 at the time when Niru was cutting wood but injuries were inflicted upon Mahadev and Savita only when accused nos. 1 and 4 had come again at the hut of Niru with five other persons and at that time, accused no. 1 had given an axe blow to Mahadev and accused no. 4 had given a hockey blow to Niru. Thus, there are contradictions with regard to the injuries inflicted by accused no. 4. According to the First Information

Report (Exh. 20), accused no. 4 had given hockey blow to Savita whereas in the deposition it has been stated by Niru that hockey blow was given to her on her leg.

20. It is pertinent to note that in the First Information Report (Exh. 20), it has been stated by Niru that one more lady, other than Savita, had come with Mahadev when Mahadev had come to help Niru when she was cutting wood. Name of the lady has not been given anywhere.

21. There also appears to be different versions with regard to looting of Rs. 1000/- from the pocket of underwear of Mahadev. Neither in the First Information Report (Exh. 20) nor in the deposition of Niru, there is any statement with regard to robbery of the said amount. Only Mahadev, P.W. No. 2, (Exh. 13) has stated in his deposition that Rs. 1000/- had been taken away by accused no. 1.

22. With regard to going to the hospital for treatment of Mahadev, P.W. No. 2, (Exh. 13) also, there are contradictions. In the First Information Report (Exh. 20) it has been stated that Mahadev was sent to the hospital for treatment before going to the police station whereas Niru has stated in her deposition that Mahadev first went to the police station and thereafter, he was sent to the hospital by police. Similarly, there are contradictions in the deposition given by Savita, P.W. No. 3, (Exh. 14) also. She has stated that when she had come with water, she found that Mahadev was asking accused no. 1

to go away and that denotes that the version of Niru, P.W. No. 1, (Exh. 12) is not correct when she had stated that Mahadev and Savita both had rushed to the place when she had shouted for help. Savita has also given a different version.

23. We have carefully gone through the evidence, which has been referred to by learned advocate Shri Brahmbhatt and we find much substance in what is submitted by him. The submissions made by him are found to be correct and we are also of the view that the contradictions are quite serious and one would not be inclined to believe the version given by Niru, P.W. No. 1, (Exh. 12).

24. Nothing has been said with regard to Rs. 1000/- either in the First Information Report(Exh. 20) or by Niru in her deposition. Looking to the financial condition of Niru, P.W. No. 1, (Exh. 12) and her family members, the aforestated amount of Rs. 1000/- is substantially huge and, therefore, the fact with regard to robbery of the said amount could not have escaped her attention. Moreover, according to her, at the time when accused no. 1 had come to her hut alongwith six other persons, she was present. In the circumstances, it cannot be believed that the amount was taken away without knowledge of Niru.

25. Upon going through the evidence carefully, we do not see any reason to interfere with the conclusion arrived at by the Sessions Court.

26. On the basis of the evidence adduced before the Sessions Court, in our opinion, the accused cannot be convicted and, therefore, the Sessions Court has rightly acquitted the accused. We do not find any substance in the appeal and, therefore, the appeal is dismissed.

(ANIL R. DAVE, J.)

(H.B. ANTANI, J.)

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